



Stacey G. Black  
Assistant Vice President  
Federal Regulatory - Spectrum

AT&T Services, Inc.  
1120 20<sup>th</sup> Street NW  
Suite 1000  
Washington, DC 20036

T 202.457.2290  
stacey.black@att.com  
att.com

Via Electronic Filing

April 4, 2019

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: Notice of Ex Parte Communication: *In the Matter of Use of Spectrum Bands Above 24 GHz for Mobile Radio Service*; GN Docket 14-177

Dear Ms. Dortch:

AT&T appreciates the effort in the Commission's Draft Fifth Report and Order to resolve the uncertainty raised by the request from the Department of Defense ("DoD") to use – in addition to the Lower 37 GHz band (37.0-37.6 GHz) on a sharing basis yet to be determined -- some unspecified portions of the Upper 37 MHz band (37.6-38.6 GHz) in the future (after commercial licenses have been awarded by auction).<sup>1</sup>

In its comments responding to the Third Further Notice,<sup>2</sup> AT&T recommended that the FCC resolve this uncertainty by confining any future federal use of the 37 GHz band to the current uses (which are protected under Section 30.205 of the Commission's rules) and the 600 MHz comprising the Lower 37 GHz band (37.0-37.6 GHz) already set aside for spectrum sharing.<sup>3</sup> To also allow some unspecified future federal rights in the Upper 37 GHz band (37.6-38.6), which the Commission has previously allocated for licensed commercial broadband use, would create the potential for new preclusion zones long after an auction. In turn, this unknown potential for new, post-auction preclusion zones could create harmful *pre*-auction uncertainty, the bane of maximizing the possibility of auction success and value. Moreover, AT&T observed, the Commission has no need to create such damaging uncertainty in advance of the auction: in addition to the many sites protected in existing Commission's rules, including shared access to almost 40 percent of the band, the DoD could access spectrum through secondary market mechanisms. Given the practical ability to control the deployment of facilities on federal property, and the likelihood that most requests for DoD use would be on military bases, secondary market access

---

<sup>1</sup> *In the Matter of Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Fifth Report and Order, FCC-CIRC1904-02 (publicly available March 22, 2019) ("Draft Fifth Report and Order" or "Draft Order").

<sup>2</sup> *In the Matter of Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Third Report and Order, Memorandum Opinion and Order, and Third Further Notice of Proposed Rulemaking, FCC 18-73 (rel. June 8, 2018) ("Third Further Notice").

<sup>3</sup> See, e.g., Reply Comments of AT&T Services, Inc. at Sec. III (filed Sept. 28, 2018).



negotiations would likely afford DoD with substantial access to spectrum beyond that which they already have rights to use. This would be particularly so if the federal uses were to count toward commercial licensee performance requirements or if licensees could subtract federal lands for that purpose.

Given DoD's apparent desire to have future access to not only the 600 MHz of shared spectrum in the Lower 37 GHz band, but also the 1000 MHz of spectrum in the Upper 37 GHz band to be sold at auction for exclusive licensed use, it would be reasonable to expect DoD to specify its spectrum needs so that specific areas and frequencies might be reserved in advance of the auction, both to protect its interests and to allow bidders to have a defined set of spectrum rights to consider at auction. DoD has evidently failed or refused to do so. Under these circumstances, it would be entirely appropriate for the FCC to auction the Upper 37 GHz band subject only to protection of the federal uses specified in Section 30.205 and point out that the DoD has 600 MHz (the lower 37 GHz band—37.0-37.6 GHz) at its disposal for future use.

In the Draft Fifth Report and Order, however, the Commission proposes to accommodate the DoD, after the DoD cryptically advised the Commission off the record “that there will likely be additional sites where it will need to use the band, but these other locations cannot be specifically identified at this time” and “that the lower 37 GHz band (37.0-37.7 GHz) may not be sufficient.”<sup>4</sup> But the Draft Order does not include any requirement that the DoD disclose to potential auction participants which frequencies or geographic areas the DoD might request in the future. Moreover, the Draft Order does not include any rules that would protect commercial licensees' spectrum rights after the auction. Instead, when the DoD in the future determines where it “will need to use the band,” the FCC proposes a flimsy coordination process:

The Department may submit requests for access to the Upper 37 GHz band for specific military sites, such as military bases and ranges. Such requests would be made only when proposed operations could not be accommodated in the Lower 37 GHz band. FCC staff would review the request to assess any potential impact on non-Federal licensees, contacting the potentially affected licensees and facilitating direct coordination with the Department.<sup>5</sup>

The Commission apparently believes that this process should “protect bidders from harmful interference” while enabling DoD to use the commercial licensee's frequencies, because such requests may be rare (as the Lower 37 GHz may be sufficient after all), the uses are likely to be in remote areas, and the propagation characteristics of the Upper 37 GHz band make interference less likely.<sup>6</sup>

---

<sup>4</sup> Draft Fifth Report and Order at ¶13. *See id.* at ¶14.

<sup>5</sup> *Id.* at 15.

<sup>6</sup> *Id.* at 15-16.



Taken together, the language describing the coordination process in the Draft Order only provides a path to process requests for Federal use of commercial licensee spectrum, but it does not “address the need for certainty,” because it would leave spectrum rights uncertain after the auction. For example, it is not clear who would determine whether a DoD request “could not be accommodated in the Lower 37 GHz band” or how that determination would be made. Similarly, it is not clear how the potentially preclusive effects of a proposed federal use would be considered, or how the risk of harmful interference would be determined.

It is not enough to observe that the DoD’s requests might be infrequent, only relate to remote areas or involve only low power deployments. To say the risk of being deprived of the use of a portion of your licensed spectrum is small is not the same as to say that it is predictable or quantifiable. To address this uncertainty, AT&T recommends amending the relevant draft language in paragraph 15 (where the coordination process is set forth) to read as follows:

The Department may submit requests for access to the Upper 37 GHz band for **existing** specific military sites **including** military bases and ranges. Such requests would be made only when proposed operations could not be accommodated in the Lower 37 GHz band. FCC staff would review the request to assess any potential impact on non-Federal licensees, **and in all cases**, contacting the potentially affected licensees and facilitating direct coordination with the Department. **A commercial licensee would be under no obligation to consent to a request for the use of its licensed frequencies by a federal user if the licensee determines that the requested use carries a significant risk of harmful interference to current or planned deployments.**

The foregoing new language (which is bolded and underlined) should give auction participants the certainty they require.<sup>7</sup>

In the alternative, the FCC should consider limiting DoD requests to the Lower 37 GHz band but granting DoD priority access in part of all of that band. Either way, to foster 5G investment in the Upper 37 GHz band, the Commission needs to provide certainty that those investments will not be threatened in the future. This can be done in only two ways—define license impairments before the auction, so investors can work around them—or give licensees the right to refuse to consent to future impairments.

We applaud the Commission for its initiative, creativity, and persistence in preparing this millimeter wave spectrum for auction. We encourage the Commission to schedule Auction 103 as soon as possible to allow the United States to maintain the lead it has established in

---

<sup>7</sup> To further enhance virtuous pre-auction certainty, AT&T recommends that the Commission codify in a rule the process described in the revised paragraph 15 set forth in the text above.



standards-based, mobile 5G deployments. AT&T is confident that, with the modest amendment suggested above, the Commission can provide potential bidders with the certainty they need to support robust investment in the Upper 37 GHz band.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS.

Please do not hesitate to contact the undersigned with any questions.

Respectfully submitted,

A handwritten signature in black ink, which appears to read "Stacey Black", is written over a light gray rectangular background.

Stacey Black